

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**DYAMONE WHITE; DERRICK
SIMMONS; TY PINKINS;
CONSTANCE OLIVIA SLAUGHTER
HARVEY-BURWELL**

PLAINTIFFS

VS.

CIVIL ACTION NO. 4:22-cv-00062-SA-JMV

**STATE BOARD OF ELECTION
COMMISSIONERS; TATE REEVES
*in his official capacity as Governor of
Mississippi; LYNN FITCH in her
official capacity as Attorney General of
Mississippi; MICHAEL WATSON in
his official capacity as Secretary of
State of Mississippi***

DEFENDANTS

**DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' EXPERTS'
IMPROPER REBUTTAL DISCLOSURES**

COME NOW the defendants, State Board of Election Commissioners, Tate Reeves, in his official capacity as Governor of Mississippi, Lynn Fitch, in her official capacity as Attorney General of Mississippi, and Michael Watson, in his official capacity as Secretary of State of Mississippi, (hereinafter collectively “Defendants”) by and through counsel, and file this their motion to strike Plaintiffs’ experts’ improper rebuttal disclosures, and in support thereof would show unto the Court the following:

1. The Court should strike Plaintiffs’ rebuttal report of Traci Burch, Ph.D., and a portion of their rebuttal report and corrected rebuttal report of Byron D’Andra Orey, Ph.D., because these disclosures exceed the scope of permissible expert rebuttal or supplementation

pursuant to FRCP 26. Furthermore, the governing factors weigh in favor of striking the aforementioned improper expert disclosures and excluding any related testimony.

2. Defendants adopt and incorporate by reference, as if fully and completely set forth herein, the arguments authorities set forth in the *Memorandum of Authorities in Support of Defendants' Motion to Strike Plaintiffs' Experts' Improper Rebuttal Disclosures*, being filed contemporaneously herewith.

3. On the basis of the grounds asserted herein and as further set forth in the aforementioned memorandum of authorities, Defendants submit that the Court should strike Plaintiffs' improper expert rebuttals and exclude any related testimony.

4. In further support of their motion, Defendants submit the following:

Exhibit "A" Orey Corrected Rebuttal Report

Exhibit "B" Diaz Report

Exhibit "C" Burch Initial Report

Exhibit "D" Orey Initial Report

Exhibit "E" Swanson Report

Exhibit "F" Bonneau Report

Exhibit "G" Burch Rebuttal Report

Exhibit "H" Orey Rebuttal Report

Exhibit "I" 2/14/2023 Good Faith Letter

Exhibit "J" 2/16/2023 E-mail from Plaintiffs' Counsel to Defense Counsel

Exhibit "K" 2/27/2023 E-mail from Plaintiffs' Counsel to Defense Counsel

Exhibit "L" 2/28/2023 E-mail Correspondence between Counsel and Court

Exhibit "M" Declaration of David A. Swanson, Ph.D.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court make and enter its Order (1) granting Defendants' motion to strike; (2) striking the rebuttal report of Traci Burch, Ph.D., in its entirety; (3) striking Paragraphs 6-8 and Table 1 of the rebuttal report and corrected rebuttal report of Byron D'Andra Orey, Ph.D.; and (4) excluding, at the trial of this matter, any and all testimony related to the aforementioned rebuttal disclosures so stricken. Defendants respectfully request that the Court suspend the remaining case management deadlines pending a ruling on the instant motion. In the event the motion is denied in whole or in part, Defendants request a reasonable extension of time for their experts to prepare written surrebuttals to any unstricken portions of the rebuttal reports of Dr. Burch and Dr. Orey. Defendants further respectfully request any and all such other relief to which they may be entitled in the premises.

THIS the 10th day of March, 2023.

Respectfully submitted,

STATE BOARD OF ELECTION
COMMISSIONERS, TATE REEVES, IN HIS
OFFICIAL CAPACITY AS GOVERNOR OF
MISSISSIPPI, LYNN FITCH, IN HER OFFICIAL
CAPACITY AS ATTORNEY GENERAL OF
MISSISSIPPI, AND MICHAEL WATSON, IN HIS
OFFICIAL CAPACITY AS SECRETARY OF
STATE OF MISSISSIPPI, DEFENDANTS

By: LYNN FITCH, ATTORNEY GENERAL
STATE OF MISSISSIPPI

By: s/Rex M. Shannon III
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AS GOVERNOR OF MISSISSIPPI, LYNN
FITCH, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF MISSISSIPPI, AND
MICHAEL WATSON, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF STATE OF
MISSISSIPPI

CERTIFICATE OF SERVICE

I, Rex M. Shannon III, Special Assistant Attorney General and one of the attorneys for the above-named State Defendants, do hereby certify that I have this date caused to be filed with the Clerk of the Court a true and correct copy of the above and foregoing via the Court's ECF filing system, which sent notification of such filing to all counsel of record.

THIS the 10th day of March, 2023.

s/Rex M. Shannon III
REX M. SHANNON III